



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**SENSITIVE**

**MEMORANDUM**

TO: The Commission

FROM: Lawrence M. Noble  
General Counsel

BY: Lois G. Lerner *LP*  
Associate General Counsel

SUBJECT: Pre-MUR 391  
MSE Technology Applications, Inc.

**I. ACTIONS RECOMMENDED:**

Open a MUR, find reason to believe MSE Technology Applications, Inc. ("MSE") knowingly and willfully violated 2 U.S.C. §§ 441f, 441b(a) and 441c, and enter into pre-probable cause to believe conciliation.

**II. BACKGROUND**

On May 4, 2000, this Office received a referral from the Department of Justice involving MSE, a defendant in a criminal case in the District of Montana involving violations of the Federal Election Campaign Act of 1971, as amended ("FECA"). Included with the referral was a check payable to the Federal Election Commission in the amount of \$19,500. According to the referral, the check was tendered to the Department of Justice as a consequence of a global plea agreement through which the defendant seeks to satisfy simultaneously its criminal and administrative liability for knowingly and willfully violating the FECA. The referral states that MSE has paid a criminal fine of \$97,500 and been sentenced to two years of probation, during which time MSE's principal officers will implement an internal corporate program to prevent future violations of the

FECA, as well as perform 200 hours of community service by lecturing on the requirements and prohibitions of the FECA.

The plea agreement states that MSE pleads guilty to one count of violating 2 U.S.C. §§ 441b(a) and 441f by "unlawfully causing the name of a person to be used in connection with the making of a campaign contribution." According to the plea agreement, MSE admits that its conduct constituted a knowing and willful violation of 2 U.S.C. §§ 441b(a) and 441f, and recognizes that the FEC has exclusive authority to seek civil remedies for those violations pursuant to 2 U.S.C. § 437g(a)(5). The agreement also states that MSE recognizes that the Department of Justice lacks authority under FECA to bind or otherwise limit the FEC in the imposition of administrative and civil penalties for offenses arising under the FECA. Under the terms of the agreement, MSE agrees to submit to the FEC's jurisdiction, to cooperate with the FEC in its compliance proceedings, including waiving FEC notification procedures to which it may be entitled, all evidentiary privileges, and any statute of limitations which may be applicable to the FEC proceedings, and to enter into a conciliation agreement with the FEC and to pay whatever civil penalty the FEC deems appropriate pursuant to 2 U.S.C. § 437g(a)(5).

### **III. FACTUAL AND LEGAL ANALYSIS**

#### **(a) Facts**

According to the referral, in late July or early August 1998, Donald R. Peoples, the President and Chief Executive Officer of MSE was notified that Senator Christopher "Kit" Bond of Missouri would be traveling in the northwest in August 1998. Senator Bond was running for reelection at this time. Representatives of MSE thought Senator Bond should be invited to Butte to visit its facilities. Senator Bond made a commitment to visit Butte and MSE in August 1998. At some point soon thereafter, Donald Peoples announced Senator Bond's upcoming visit at the monthly executive staff meeting. At the meeting, it was determined that "community incentive awards" should be distributed to 13 MSE executives. On August 6, 1998, payments of \$750 were distributed to 13 employees. MSE had distributed "community incentive awards" to a comparable group of executive employees in 1995 and 1998, although the amounts in those years were less than half the amounts awarded in August 1998.

At approximately the same time, Donald Peoples sent an invitation to individuals in the Butte area, including the recipients of the community incentive awards, to attend a luncheon with Senator Bond. The invitation suggested \$500 to \$1,000 as the appropriate range for contributions to the Bond reelection campaign. Based upon encouragement from MSE officials, 12 of the 13 MSE employees who had received the \$750 awards contributed \$750 to the

Missourians for Kit Bond campaign committee in August 1998, except for one who donated \$1,000. As a result of MSE's conduct, the Missourians for Kit Bond campaign unwittingly and incorrectly reported as individual contributions what where in fact \$9,750 in corporate contributions funneled through conduits. The plea agreement states that "such conduct on the part of the Defendant MSE constitutes a knowing and willful violation of FECA."<sup>1</sup>

### **(b) The Law**

Pursuant to 2 U.S.C. § 441f, no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for a corporation to make a contribution or an expenditure in connection with any federal election and for any officer or director of any corporation to consent to any contribution or expenditure by the corporation.

Pursuant to 2 U.S.C. § 441c, it is unlawful for any person who enters into any contract with the United States or any department or agency thereof either for rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for the latter of (A) the completion of performance under; or (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use.

### **(c) Analysis**

This Office believes that the unusual circumstances of the matter warrant special handling. Although the issues in this matter were the subject of

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<sup>1</sup> MSE and Donald Peoples were respondents in closed MUR 4864, which was generated by a complaint alleging, inter alia, that contributions to the August 1998 fundraiser were reimbursed by MSE. The response of MSE stated that employees were not pressured to contribute to the fundraiser, and that no one affiliated with MSE reimbursed any of the contributing employees for their contributions. MUR 4864 was a low-rated case and dismissed by the Commission. The file was closed on June 10, 1999.

MUR 4864, it is this Office's view that the Commission is not precluded from finding reason to believe and entering into a conciliation agreement on the basis of the instant referral. The Commission's decision to take no action in MUR 4864 was made on the basis of the complaint and the response submitted by MSE, which is a separate matter from the instant referral. In this instance, an investigation already has been conducted by the Department of Justice, revealing that the response submitted by MSE in MUR 4864 did not accurately reflect the factual circumstances. Moreover, a plea agreement has been entered into, and MSE stands ready to enter into an agreement with the Commission and pay a \$19,500 civil penalty. This matter is similar to closed MURs 4704, 4772, 4796, and 4879 which were also referred to the Commission by the Department of Justice after reaching agreements with the respondents that they would submit themselves to the Commission's jurisdiction and pay civil penalties.<sup>2</sup> Accepting limited referrals such as this one where the evidence supports a finding and the respondents voluntarily agree to a civil penalty as part of that referral, is a way for the Commission to impact the process, expending only minimal resources.

In light of the facts contained in the referral, this Office recommends that the Commission open a Matter Under Review and find reason to believe that MSE Technology Applications Inc. knowingly and willfully violated 2 U.S.C. §§ 441f, 441b(a), and 441c by making corporate contributions in the name of others to Missourians for Kit Bond, a federal political committee.<sup>3</sup> This Office further recommends that the Commission enter into pre-probable cause to believe conciliation with MSE Technology Applications, Inc. and approve the attached conciliation agreement which provides for an admission of the violations and a \$19,500 civil penalty. This Office believes that the amount of the civil penalty is acceptable in light of the facts that the violations occurred in 1998, that it represents 200% of the amount in violation, and that the respondent has agreed to pay a criminal fine of \$97,500.

#### **IV. RECOMMENDATIONS**

1. Open a Matter Under Review.
2. Find reason to believe that MSE Technology Applications, Inc. knowingly and willfully violated 2 U.S.C. §§ 441f , 441b(a), and 441c.

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<sup>2</sup> In all of these matters, the Commission accepted the civil penalties proffered as part of plea agreements with the Department of Justice. Moreover, because the matters arose from DOJ global settlement referrals, the Commission made no findings against any of the conduits or recipient political committees in those matters.

<sup>3</sup> Based upon the information in MUR 4864 that MSE is a government contractor, this office is recommending the inclusion of a § 441c finding.

3. Enter into conciliation with MSE Technology Applications, Inc. prior to a finding of probable cause to believe, and approve the attached Conciliation Agreement.

4. Approve the attached Factual and Legal Analysis and the appropriate letter.

Attachments:

1. Conciliation Agreement
2. Factual and Legal Analysis



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: June 5, 2000

SUBJECT: MUR 391 - Memo tot he Commission

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

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